

renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

46. (new) A kit for the treatment of the skin of a consumer comprising:

a first dermatological composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first composition is between about 2.5 and about 4; and

a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

REMARKS

Reconsideration of the subject application is respectfully requested in view of the preceding amendments and for the following reasons.

Claims 10-23, 31-33, 36 and 40-44 were rejected under 35 U.S.C. § 112, first paragraph, as not enabling a person of ordinary skill in the art to make or use the invention commensurate with the scope of the claims. More specifically, the Examiner states that “the specification, while being enabling for hydroxy carboxylic acids, keto acids, hydroxybenzoic acids and trifluoroacetic acid, does not reasonably provide enablement for an acid suitable as a skin renewing acid.” Applicant respectfully traverses this rejection.

In support of the rejection, the Examiner states that the specification does not provide a definition of skin renewing acid or skin renewal. Applicant submits that the specification provides a clear teaching of the meaning of these terms that would be readily understood by a person of ordinary skill in the art. For example, in the first two paragraphs of the *Background of the Invention* section at page 1, Applicant teaches that skin renewal is stimulated by removal of the outer keratinous layers of the skin by either chemical or mechanical exfoliation. Skin renewing acids, such as alpha-hydroxy acids, stimulate skin renewal by the removal of the outer layers of dead skin cells. Further, Applicant provides characteristics that suitable skin renewing acids should have (page 5). The acids should be cosmetically acceptable (high purity, suitable for use in contact with skin), free from unpleasant odor, low or substantially no toxicity, stability for shelf-life, freedom from regulatory problems, known and tolerable side effects and a white or colorless appearance in the end product. Further, Applicant provides a list of the acceptable kinds of acids for use as skin renewing acids. The list includes those recognized by the Examiner, hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and also includes non-hydroxy acids (such as trifluoroacetic acid and azelaic acid) and mineral acids, as set forth on page 5 of the application. In summary, the application teaches the function of the skin renewing acids, the characteristics they should display and the classes of acids which may be used. Thus, Applicant submits that a person of ordinary skill in the art, armed with the teaching in the specification would be able to practice the invention as set forth in the claims.

Claims 10-26, 31, 33 and 36-44 were rejected under 35 U.S.C. § 112, first paragraph, as

not enabling a person of ordinary skill in the art to make or use the invention commensurate with the scope of the claims. More specifically, the Examiner states that “the specification, while being enabling for sodium bicarbonate and sodium hydroxide, does not reasonably provide enablement for an alkaline agent suitable for use in skin care.” Applicant respectfully traverses this rejection.

Applicant specifies at pages 8-9 of the specification that sodium hydroxide or other alkaline agents may be used to adjust the pH in place of sodium bicarbonate. Additionally, Applicant states at page 6 that “[a] wide variety of acids, bases and buffers can be utilized to adjust and/or maintain the pH of the compositions useful in the present invention.” Examples of material useful in adjusting the pH are provided and include the bases ammonia, sodium carbonate, sodium hydroxide, triethanolamine and the like. A person of ordinary skill in the art would recognize that the foregoing list of bases are suitable for use in a skin care composition. An important attribute of the second (neutralizing) composition *is the pH*, which should be above 7 to about 12. It is not the exact identity of the base but rather the resulting pH that gives the second composition its desired attribute, the ability to neutralize the acid composition. Moreover, a person of ordinary skill in the art would recognize which bases are appropriate for a skin care composition based on the teachings of the specification. For example, although sodium bicarbonate may be a preferred base, other alkaline agents, such as sodium hydroxide, are clearly contemplated. A person of ordinary skill in the art would recognize that other alkaline agents would include at least, for example, the other salts of bicarbonate and hydroxide, as the counter-ion does not significantly affect the chemical properties of the alkaline agent in aqueous solution.

Claims 10-26, 31-33, 37, 38, 40, 41, 43 and 44 were rejected under 35 U.S.C. § 112, first paragraph, as not enabling a person of ordinary skill in the art to make or use the invention commensurate with the scope of the claims. More specifically, the Examiner states that “the specification, while being enabling for 0.1-10 % of hydroxy carboxylic acids, keto acids, hydroxybenzoic acid or trichloroacetic acid, does not reasonably provide enablement for an effective amount of an acid.” In support of this rejection, the Examiner states that “[t]he amount

of acids used in skin care composition must be limited in order to avoid adverse and dangerous effects.” Applicant respectfully traverses this rejection.

Applicant respectfully submits that the claims are properly enabled by the specification. The claims include acid compositions that have a pH between about 2.5 and about 4. As a person of ordinary skill in the art would recognize, *the pH is directly proportional to acid concentration*. Moreover, the pH is more telling to a person of ordinary skill as it takes into account not only the concentration of the acid, but also acid strength, buffer concentration, etc. The pH range provided in the claims addresses the Examiner’s concerns regarding adverse and dangerous effects.

Claims 10-26, 31-33 and 36-44 were rejected under 35 U.S.C. § 112, first paragraph, as not enabling a person of ordinary skill in the art to make or use the invention commensurate with the scope of the claims. More specifically, the Examiner states that “the specification, while being enabling for 0.1-15 % of sodium bicarbonate or sodium hydroxide, does not reasonably provide enablement for any amount of an alkaline agent.” Applicant respectfully traverses this rejection.

Applicant respectfully submits that the claims as amended are properly enabled by the specification. The claims include basic compositions that have a pH between about 7 and about 12. As a person of ordinary skill in the art would recognize, the pH is directly proportional to base concentration. Moreover, the pH is more telling to a person of ordinary skill as it takes into account not only the concentration of the base, but also its basicity, buffer concentration, etc. The pH range provided in the claims addresses the Examiner’s concerns regarding adverse and dangerous effects.

In view of the foregoing, it is respectfully asserted that the specification enables one of ordinary skill in the art to make Applicant’s invention commensurate in scope with the present claims and thus the rejections under 35 U.S.C. § 112 should be withdrawn.

Claims 10-26, 31-33 and 36-44 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to recite the unit of measurement (by weight or volume) when reciting amounts of components in the composition. Applicants respectfully direct the Examiners attention to page 4 of the application, wherein Applicant states that "[a]ll percentages and ratios used herein are by weight of the total composition.... All percentages are on a weight/weight basis."

Claims 10-21, 23-26, 31, 32, 36, 37, 39, 40 and 43 were then rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,720,949 to Davis ("Davis") and claim 22 was rejected under 35 U.S.C. § 103(a) as being obvious over Davis. Claim 21 was also rejected under 35 U.S.C. § 103(a) as being obvious over Davis in view of U.S. Patent No. 4,797,273 to Linn et al. ("Linn") and Database REGISTRY on STN for polysorbate-20 ("Registry"). Similarly, claims 33, 38, 41, 42 and 44 were rejected under 35 U.S.C. § 103(a) as being obvious in view of the combined teachings of Davis and U.S. Patent No. 5,242,433 to Smith et al. ("Smith").

Applicant respectfully traverses the foregoing rejections and asserts that the afore-cited references, whether viewed alone or in combination, neither disclose nor suggest Applicant's presently claimed invention for at least the following reasons.

Davis discloses a "cosmetic mask." Davis teaches that a suitable first composition is a cream or gel comprising, in part, a thickening agent effective to provide a viscosity of from about 50,000 to about 1 million cps at 25°C and a suitable second composition is a gel comprising, in part, a thickening agent effective to provide a viscosity of from about 25,000 to about 500,000 cps at 25°C (Col. 3, lines 30-66 of Davis) and that the first and second compositions are combined to give the cosmetic mask product. The thick cream or gel compositions of Davis must be applied to the skin using a spatula or other similar means. (Col. 2, line 42) and do not flow appreciably when applied to the skin (Col. 3, line 12; Col. 3, line 41). The compositions of Davis are not suitable for application with, for example, a pad. The mask of David results in a

thick layer on the skin which subsequently is removed from the skin by means of a cloth or scraper (Col. 1, lines 35-49 of Davis). The face of the consumer may then be washed with a gentle soap composition. (Col. 11, line 66-Col. 12, line 5). Moreover, at Col. 1, lines 20-49, Davis even appears to distinguish its cosmetic mask from products that are generally massaged into the skin of the consumer and, thus, not removed.

It is respectfully asserted that Davis teaches away from the presently claimed invention. That is, in Applicant's method of treatment and kit for the treatment of skin, the first and second compositions may be applied to the skin by means of a saturated pad. Applicant's claimed method of treatment and kit do not result in the formation of a thick mask upon the skin. Unlike the mask composition of Davis, after the Applicant's neutralizing step is applied to the skin, makeup or other cosmetic can be applied as usual. In contrast to the mask composition of Davis which must be removed from the skin with a scraper or cloth, Applicant's compositions are not rinsed off of and are not removed from the skin. As described in Applicant's specification at page 11:

The formulation of step 1 is applied all over the area of the skin to be treated, preferably in a circular motion, and allowed to dry for approximately 3 minutes. The formulation of step 2 is then applied in the same manner and allowed to dry completely. After step 2 is dried, moisturizer, sunscreen and/or makeup may be applied as usual. Neither formulation should be rinsed off of the skin.

The presently claimed invention is not a cosmetic mask to be subsequently scraped off of the skin and it respectfully asserted that one skilled in the art seeking to develop Applicant's particular method or kit would not even be motivated to look to Davis for guidance.

The addition of Linn, Smith or the Registry reference, alone or in combination, does not cure the shortcomings of Davis. For example, Linn and the Registry reference were cited as merely relating to polysorbate and Smith as disclosing pads. Applicant respectfully asserts that

there is no teaching or suggestion that would motivate one of ordinary skill in the art to combine and modify the afore-cited references in an attempt to obtain Applicant's presently claimed invention. Without such a teaching, suggestion or motivation the invention may only be considered obvious in hindsight, which is an improper basis for rejection. Accordingly, reconsideration and withdrawal of these rejections are believed to be warranted.

Claims 16-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by WO 98/22078 (U.S. 6,171,347 B1 was cited as an English language equivalent ("Kunz")). Similarly, claims 16-21, 41 and 42 were rejected under § 103(a) as being obvious in view of the combined teachings of Kunz and Smith. Lastly, claims 21-22 were rejected under 35 U.S.C. § 103(a) as being obvious in view of the combined teachings of Kunz and U.S. Patent 5,304,370 to Hawkins et al. ("Hawkins"). Applicant respectfully traverses these rejections and asserts that these references, alone or in combination, neither disclose nor suggest Applicant's presently claimed invention for at least the following reasons.

The foregoing claims include a kit for the treatment of the skin of a consumer comprising a first dermatological composition and a second dermatological composition. The first dermatological composition comprises a skin renewing acid and has a pH between about 2.5 and about 4. The second dermatological composition, which comprises an alkaline agent, is applied to the skin following the first composition, thus neutralizing the first composition.

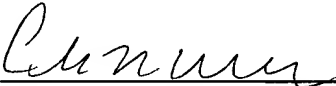
In contrast to the present invention, Kunz teaches a method and composition for reductively removing color from dyed hair. The kit described therein is a multi-component kit for coloring hair and then later removing the color. *Kunz does not teach nor suggest a dermatological composition.* The first composition of Kunz is an oxidative hair dye applied to the hair for the purpose of adjusting hair color. After the oxidative dye composition has been applied to the hair, it is rinsed off and the hair dried. The consumer now has a hair color which has been adjusted by the first composition and can be worn that way until the consumer decides to remove the color. After a period of time, the consumer may remove the hair color using a stripping composition. The stripping composition has an acidic pH of 1.6-6. The stripping

composition is not applied directly after the oxidative dying composition in order to neutralize it, but rather is applied after the hair has been rinsed and a period of time has passed. One would not apply the oxidative dying and reductive stripping compositions of Kunz to the skin to achieve the benefits of the present invention. Moreover, it is respectfully asserted that the addition of Smith, merely disclosing pads, and/or Hawkins, disclosing a hair relaxer, does not cure the short comings of Kunz for the foregoing reasons.

In view of the foregoing amendments and remarks, the application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited. The Examiner is invited to telephone the undersigned at 212-425-6320 if it is believed that a discussion would help to advance the prosecution of the application.

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Please amend claims 10, 16, 37, 40-41 and 44 and add new claims 45-46 as follows:

10. (twice amended) A method for the treatment of the skin of a consumer comprising the steps of:

- a) applying to the skin a first composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4; and
- b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

16. (twice amended) A kit for the treatment of the skin of a consumer comprising:

a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4;

a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition and about 0.1 to about 10 percent of at least one surfactant/emulsifying

agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

37. (amended) A method for treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first composition comprising an effective amount of an acid selected from the group consisting of alpha hydroxy acid, beta hydroxy acid and trichloroacetic acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent selected from the group consisting of sodium bicarbonate and sodium hydroxide, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

40. (amended) A method for treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first composition consisting essentially of an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of

the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition consisting essentially of an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

41. (amended) A kit for the treatment of the skin of a consumer comprising:

a first dermatological composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4;

a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition and about 0.1 to about 10 percent of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12; and

single-use pads for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of and not removed from the skin after application to the skin by use of a single-use pad, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

44. (amended) A method for treatment of the skin of a consumer consisting essentially of the steps of:

a) applying to the skin a first composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein the first composition and the second composition are each applied with a pad, and makeup or other cosmetic is capable of being applied thereafter to the skin.

45. (new) A method for the treatment of the skin of a consumer comprising the steps of:

a) applying to the skin a first composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second composition is greater than about 7 to about 12, and the first composition and the second composition are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.

46. (new) A kit for the treatment of the skin of a consumer comprising:

a first dermatological composition comprising an effective amount of a skin renewing acid in a cosmetically acceptable vehicle, wherein the skin renewing acid is selected from the group consisting of hydroxy carboxylic acids, keto acids, hydroxybenzoic acids, and combinations thereof, and the pH of the first composition is between about 2.5 and about 4; and

a second dermatological composition comprising an alkaline agent suitable for use in a skin care composition and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the alkaline agent is sodium bicarbonate or sodium hydroxide, and the pH of the second composition is greater than about 7 to about 12; and

a means for applying the first and second compositions, the compositions being adapted for sequential application to the skin of the consumer, wherein the first composition and the second composition are of a consistency that the compositions are not rinsed off of and not removed from the skin, wherein makeup or other cosmetic is capable of being applied thereafter to the skin.